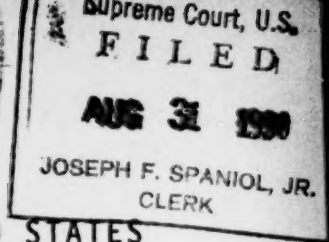


(2)
No. 90-239



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

UNITED TRANSPORTATION UNION,

Petitioner,

v.

UNITED TRANSPORTATION UNION, LOCAL 74,

Respondent.

**BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit**

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BRIEF IN OPPOSITION

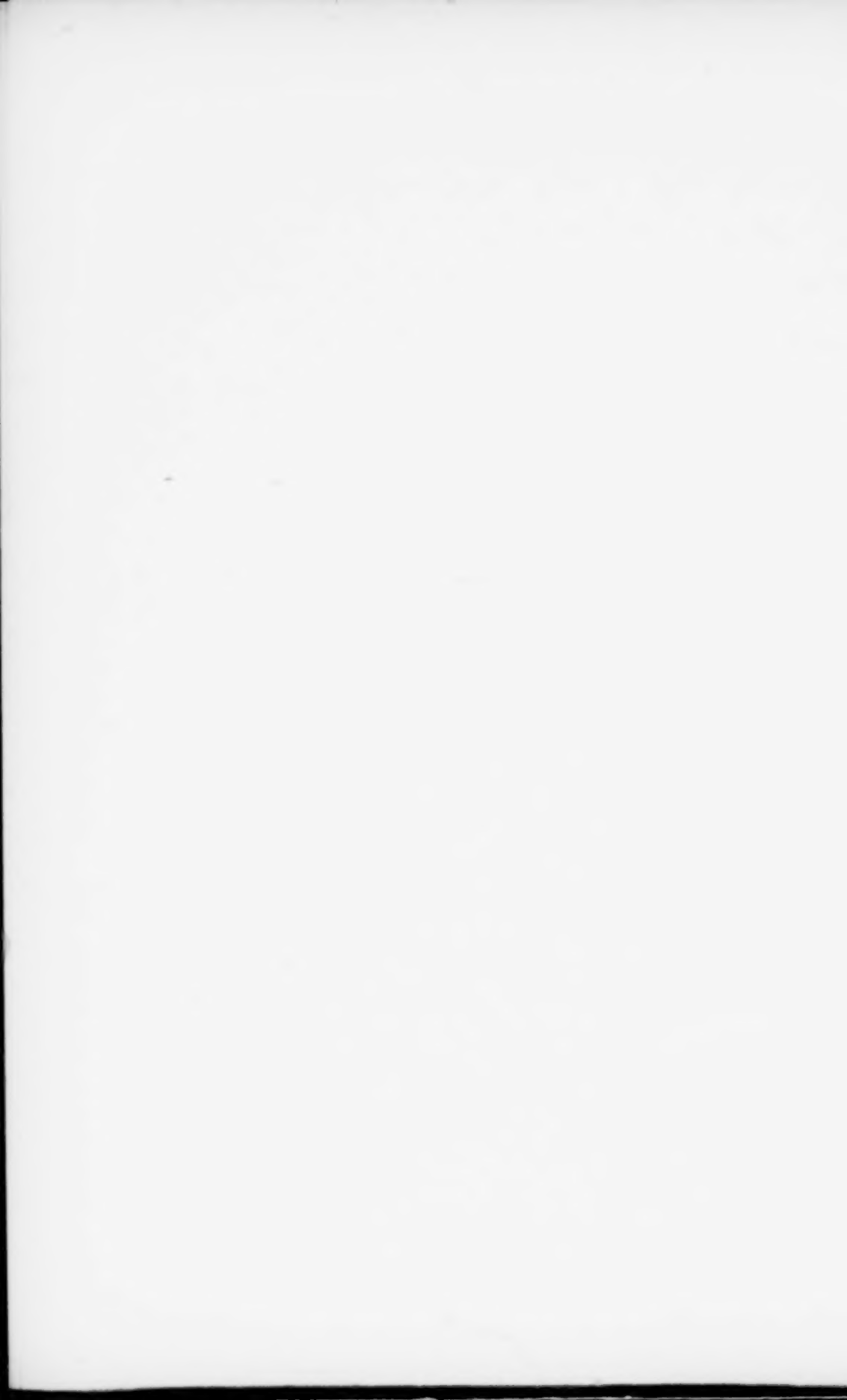
Respondent, United Transportation Union, Local 74, respectfully prays that a writ of certiorari *not* be issued to review the order of the United States Court of Appeals for the Sixth Circuit entered on May 7, 1990.



STATEMENT OF THE CASE

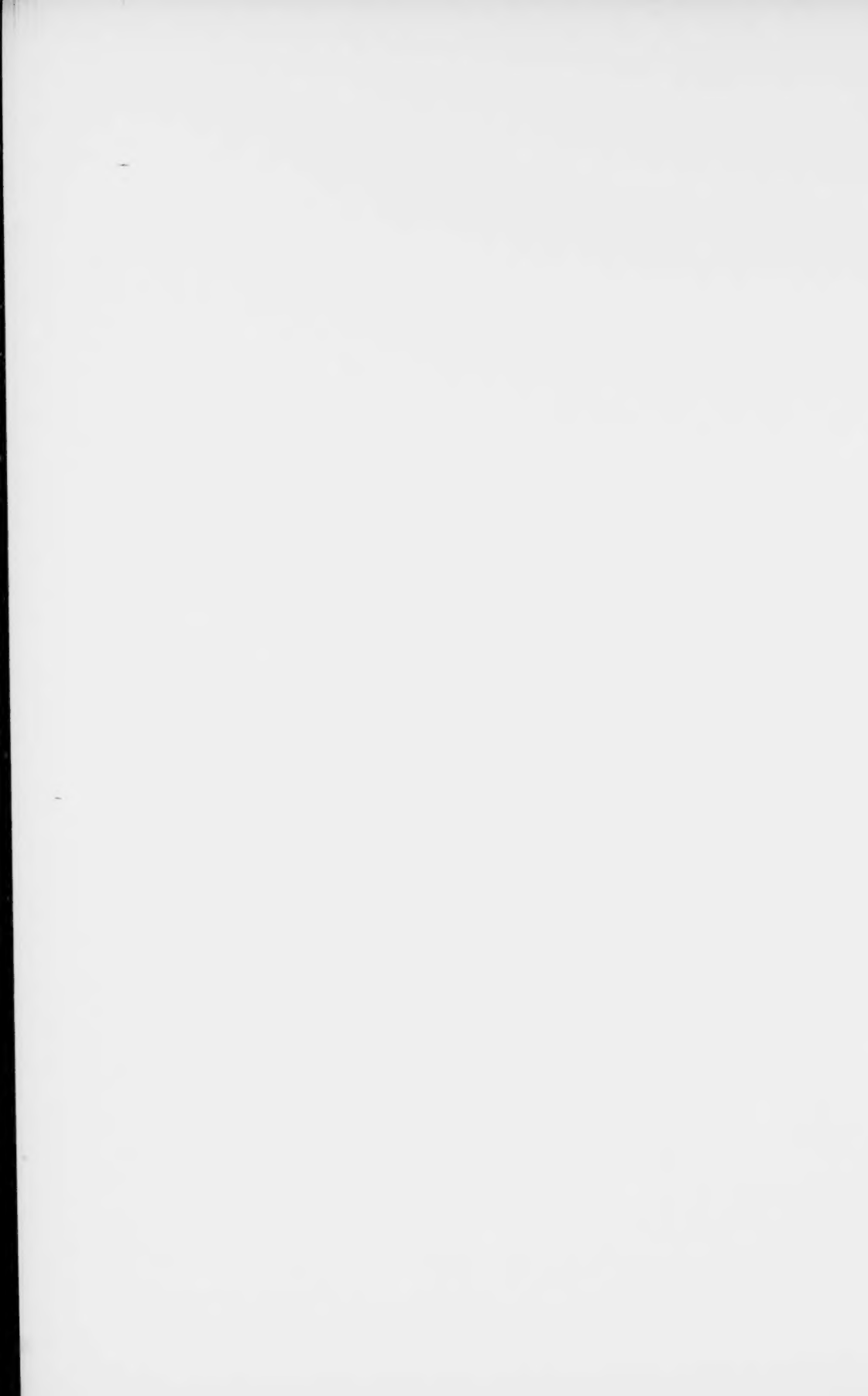
In 1982, United Transportation Union, Local 74 ("Local 74") sued its international union, "UTU," for breach of the union's duty of fair representation. The gist of the complaint was that UTU, arbitrarily and with hostile intent, engaged in a course of conduct designed to deprive the members of Local 74 of a share of yard work in the merged Conrail system as provided for in certain collective bargaining agreements between UTU and Conrail and as provided for in the union constitution.

On January 30, 1986, the District Court granted the union's motion to strike Local 74's jury demand, and the case was tried to the court in February, 1986. On July 29, 1988, the court issued Findings of Fact and Conclusions of Law adverse to Local 74.

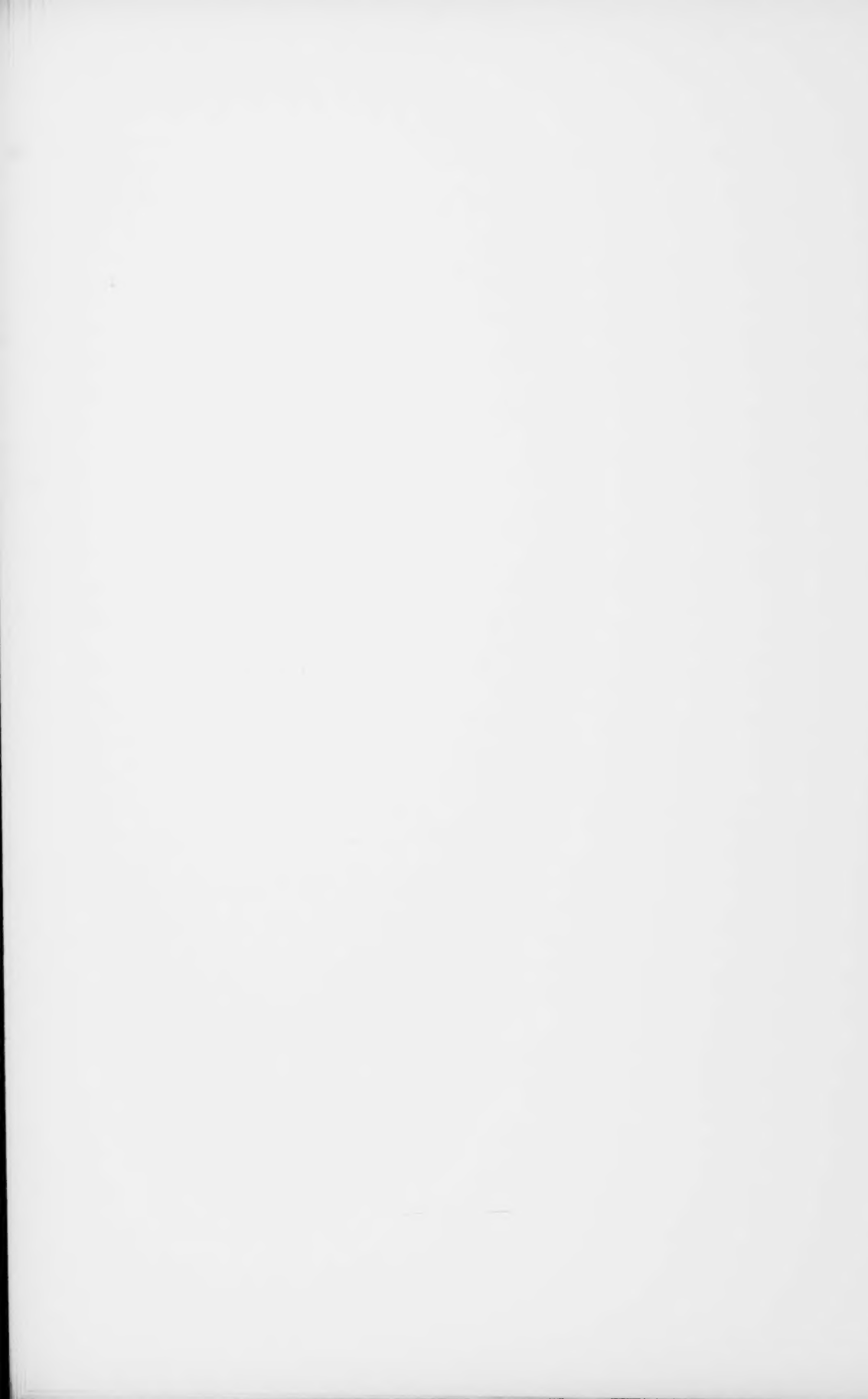


On appeal, the Sixth Circuit Court of Appeals, *inter alia*, found that the character of Local 74's action was legal in nature; that there was sufficient evidence of record to create a submissible case on the issue of whether UTU had breached its duty of fair representation; and that the trial court, therefore, had erred by entering judgment on behalf of UTU. Accordingly, the Circuit Court remanded the case to the District Court for trial by jury.

UTU petitioned this Court for a writ of certiorari and while that petition was pending, this Court decided *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. ____, 108 L.Ed.2d 519 (1990). After it decided *Terry*, this Court granted certiorari in the instant case, vacated the judgment of the court below and remanded the case to the Sixth Circuit



Court of Appeals for reconsideration in light of *Terry*. On May 7, 1990, the Sixth Circuit Court of Appeals entered an order deleting one sentence from the earlier opinion of the court and reaffirming its earlier decision "in all other respects."



SUMMARY OF ARGUMENT

Contrary to Petitioner's assertions, Local 74 did not sue its international union for "having failed to obtain from the employer (Conrail) a seniority system giving employees on their former line a 'fair and equitable division' of work done on that line that the local claimed had been diverted by the employer (Conrail) to another line . . ." (Petitioner's brief at p. 7). As the Court of Appeals found, this is essentially a claim for compensatory damages by the members of Local 74 because their union allegedly refused, arbitrarily and with discriminatory intent, to comply with the terms of certain collective bargaining contracts and with the union constitution which expressly provide that these former employees of the Erie Lackawanna Railroad are entitled to a "fair and equitable division of the work" in the

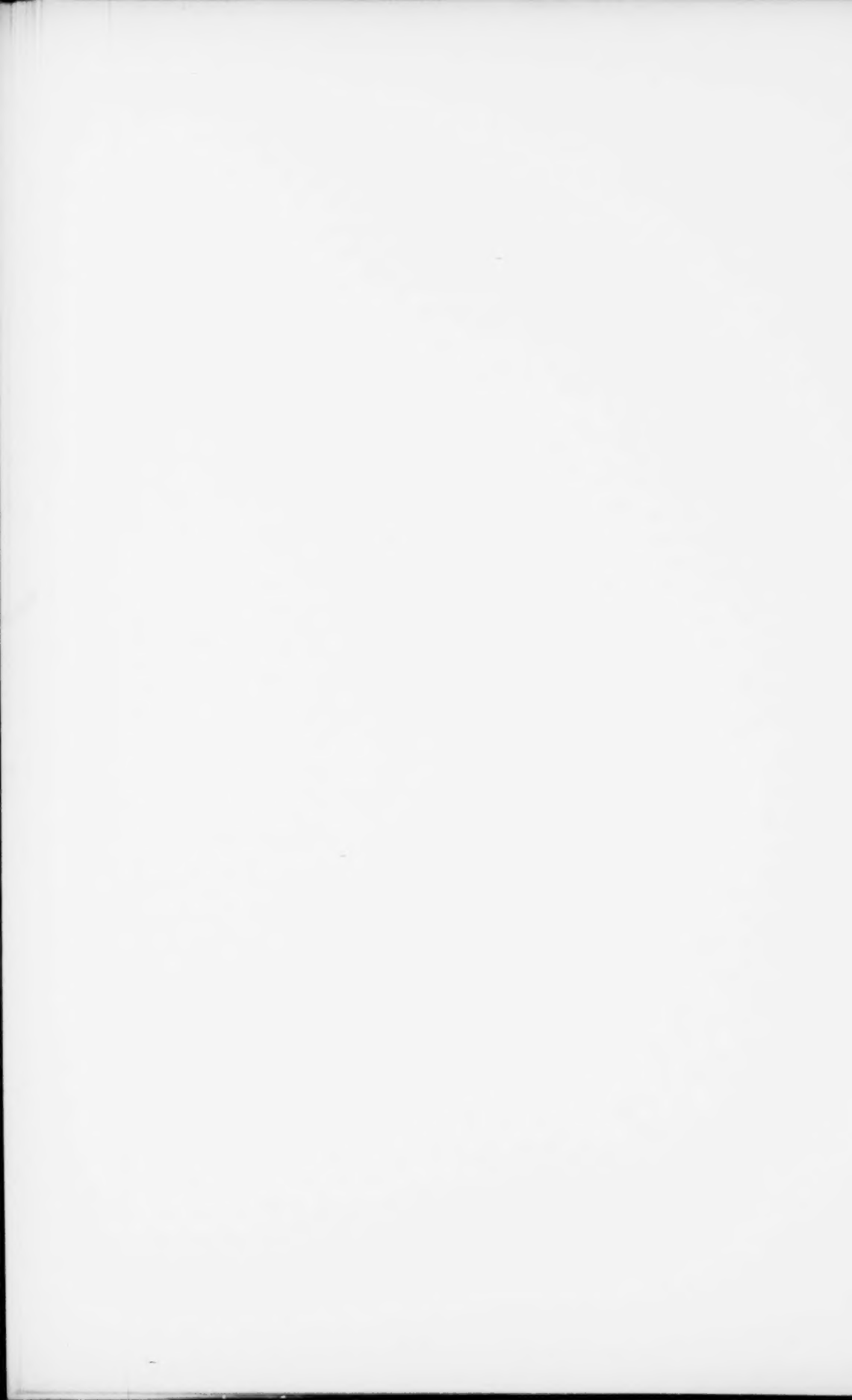


merged railroad system. The Court of Appeals found that the remedy sought by Local 74 in this action is legal in nature and, therefore, Local 74 is entitled to trial by jury. On remand, the Court of Appeals, as directed by this Court, reviewed its initial decision in light of this Court's ruling in *Terry*, deleted one sentence from its original opinion and, in all other respects, reaffirmed that decision.

The Court of Appeals' decision is wholly in conformity with this Court's decision in *Terry*. By amending its decision to clearly reflect that back pay relief in the context of this action should be characterized as a breach of contract remedy and, therefore, legal in nature, the Court of Appeals simply removed an ambiguity in its original decision so as to make that decision conform even more



clearly with this Court's opinion in *Terry*. Since the Court of Appeals fully complied with this Court's directions on remand to consider its original decision in light of *Terry*, there is no basis to review this case.



REASONS WHY THE WRIT SHOULD
NOT BE GRANTED

I.

THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT FULLY CONFORMS WITH THIS COURT'S REASONING AND HOLDING IN *CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL NO. 391 v. TERRY*, 494 U.S. ___, 108 L.Ed.2d 519 (1990), AND, THEREFORE, THERE IS NO REASON WHY THIS COURT SHOULD GRANT A WRIT OF CERTIORARI.

In *Terry*, this Court found that a claim by union members against their union for compensatory damages representing back pay and lost benefits was for relief of a kind that was legal in nature and, therefore, there was a right to a jury trial under the Seventh Amendment to the United States Constitution. In the instant case, as did this Court in *Terry*, the Court of Appeals found that the nature of the remedy sought by Local 74, namely, back pay and other compensatory damages, is legal in nature and, using substantially the same reasoning this Court used in *Terry*, arrived



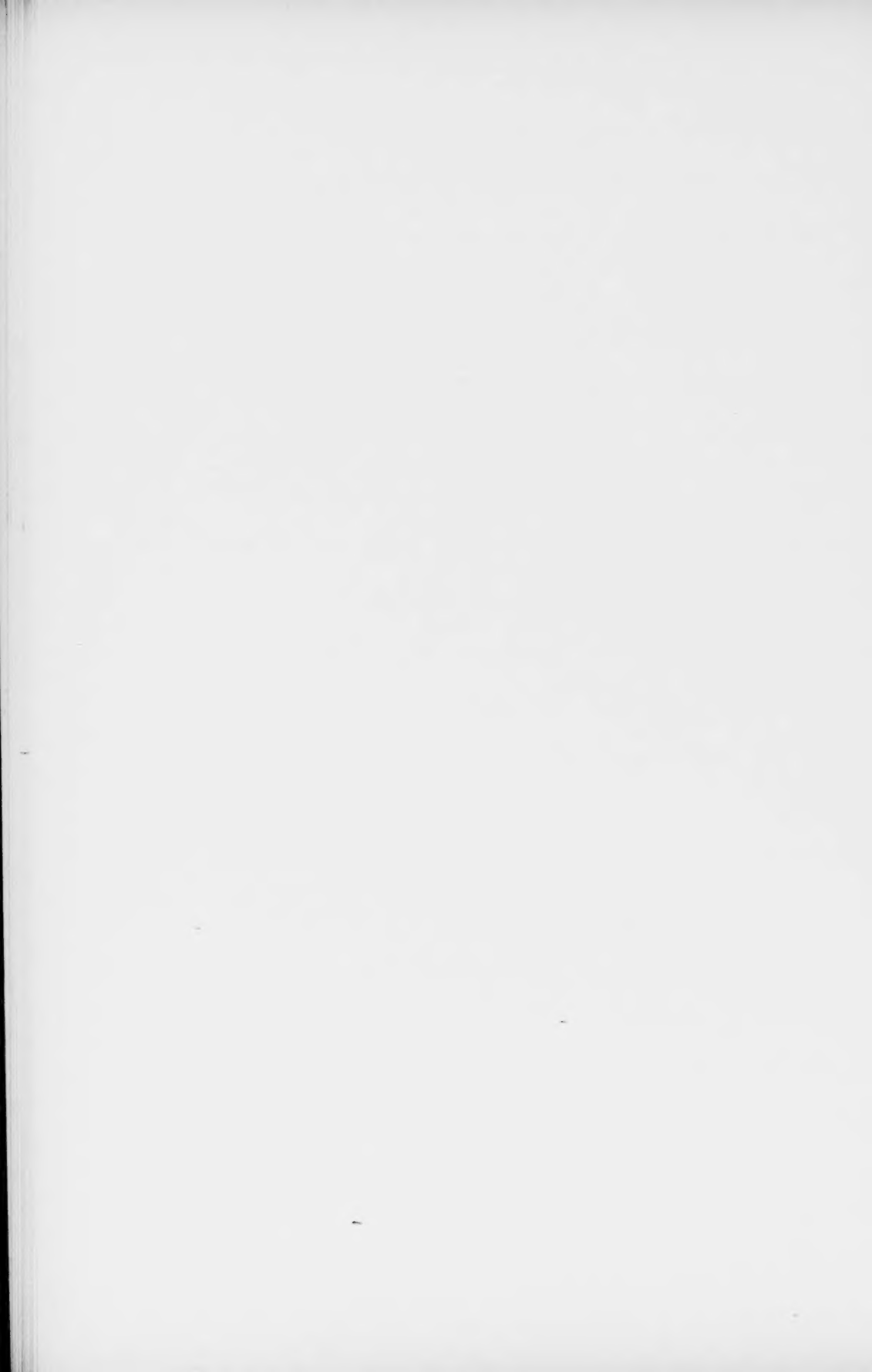
at the same conclusion as regards Local 74's right to a jury trial. By deleting one sentence in the original opinion suggesting that back pay may be a "wholly equitable" remedy, the Court of Appeals simply removed an ambiguity which served to make its original opinion conform even more fully with this Court's ruling in *Terry*.

Petitioner attempts to reconstruct the record by gratuitously transforming Local 74's action into a "negotiation case." It argues that what Local 74 is essentially seeking is an order requiring the union to negotiate for them a fair share of work in the merged system and, therefore, this action should be deemed as one which is essentially equitable in nature thereby rendering the Court of Appeals' decision inconsistent with this Court's holding in *Terry*. Aside from the fact that, as the Court of Appeals found, this argument



cannot be sustained from the record, it is illogical and unsupportable on its face.

The merger in question occurred in 1976. The employees of Local 74 tried for six years to obtain what their collective bargaining contracts and union constitution expressly said they were entitled to, namely, a fair share of work in the merged system. As the record shows, many of these men were either forced out of the railroad industry because of lack of work or, since 1976, have reached retirement age. It is clear on the face of it that any kind of equitable relief would be all but meaningless to most of the members of Local 74 and that the only meaningful remedy to them would be the compensatory damages which they seek. The facts of this case and the nature of the remedy sought by Local 74 clearly show that, consistent with this Court's reasoning in *Terry*, the Court



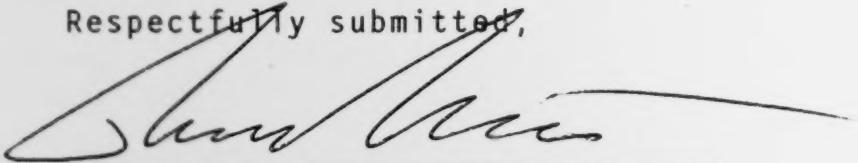
of Appeals was correct in concluding that the members of Local 74 are entitled to trial by jury.



CONCLUSION

This Court should deny the Petition for Writ of Certiorari because the decision of the United States Court of Appeals for the Sixth Circuit fully complies with this Court's order of remand and with the holding and reasoning of this Court in *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry, supra*.

Respectfully submitted,



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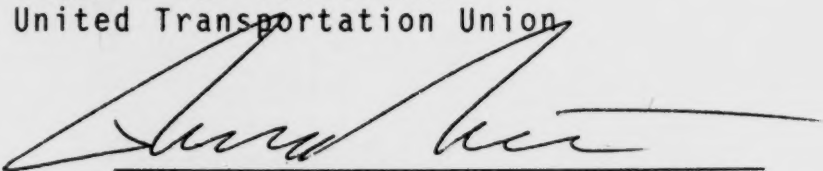


CERTIFICATION

This is to certify that three copies of the foregoing Respondent's Brief in Opposition were served on August 30, 1990 by First Class U.S. Mail, postage prepaid, upon the following counsel of record:

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